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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 GREGORIO LUNA LUNA,

9 Petitioner,

10 v.

11 MIKE OBENLAND,

12 Respondent.

NO: 4:19-CV-5122-TOR

ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS

13 BEFORE THE COURT is the Petition for Writ of Habeas Corpus Under 28
14 U.S.C. § 2254. ECF Nos. 1, 11. Petitioner, a prisoner at the Monroe Correctional
15 Complex, is proceeding *pro se*. Respondent is represented by John J. Samson.
16 Respondent has answered the Petition and filed relevant portions of the state court
17 record. ECF Nos. 16, 17. Petitioner filed a reply. ECF No. 20. The Court has
18 reviewed the record and files herein, the completed briefing and is fully informed.
19 For the reasons discussed below, Gregorio Luna Luna's Petition for Writ of
20 Habeas Corpus is **denied**.

BACKGROUND

At a jury trial, Petitioner Gregorio Luna Luna was convicted of aggravated first degree murder and was then sentenced to life imprisonment without the possibility of parole. *See* ECF Nos. 16 at 2-3; 17-1 at 2-10, Exh. 1. Before trial, “the prosecutor offered to agree to a sentence of 420-months in exchange for Luna Luna pleading guilty [to murder in the first degree] by the date of the omnibus hearing.” ECF No. 16 at 2. At that time, the prosecutor made it clear that, absent a plea deal, the prosecution would increase the charge to aggravated first degree murder. ECF No. 16 at 2. Petitioner did not enter the plea deal.

Petitioner appealed his conviction to the Washington Court of Appeals which affirmed the conviction and denied reconsideration. ECF Nos. 16 at 3; 17-1 at Exhs. 2, 10. The Washington Supreme Court denied Petitioner’s request for review. ECF Nos. 16 at 4; 17-1 at Exh. 13. Petitioner then filed a personal restraint petition in the Washington Court of Appeals asserting, among other things, that his counsel provided ineffective assistance because counsel did not use a Spanish language interpreter when explaining the plea offer. ECF Nos. 16 at 4; 17-1 at Exh. 15 (Ground 2). The Washington Court of Appeals ordered the Superior Court to conduct an evidentiary hearing on this issue. ECF Nos. 16 at 4; 17-1 at Exh. 18. The Superior Court conducted the evidentiary hearing and entered its findings of fact concerning Petitioner’s allegations of ineffective assistance of

1 counsel. ECF No. 17-1 at Exh. 20.

2 After the Superior Court held the evidentiary hearing and entered its
3 findings, the Washington Court of Appeals issued its decision on the issue:

4 The reference hearing was held on March 30, 2017. The court
5 heard testimony from Ms. Hudson, Ms. Ajax, and Mr. Luna Luna.
6 Based upon the testimony and exhibits admitted at the hearing, the
court entered 51 findings of fact. Mr. Luna Luna does not challenge
any of the findings. Thus, all are verities on review.

7 The court's findings, as closely paraphrased, reflect the
8 following facts. Attorney Hudson speaks fluent Spanish as her first
9 language and does not utilize a Spanish interpreter unless specifically
10 requested by a defendant. (Finding of Fact "FF" 2, 3, 4) Ms. Hudson
11 met with Mr. Luna Luna on August 16, 2010 and explained the July
27, 2010 plea offer to him in Spanish. He told her he was unwilling to
plead to anything where he admitted any intentional act against the
victim. (FF 11, 12, 13)

12 During pendency of the case, one of Mr. Luna Luna's original
13 attorneys, Sean Sant, was elected Franklin County Prosecutor. He
14 could no longer represent Mr. Luna Luna, and the case was referred to
the Benton County Prosecutor's Office for prosecution. Ms. Ajax was
then appointed as co-counsel in Mr. Sant's stead. (FF 14, 15)

15 On March 8, 2011, defense investigator Mario Torres emailed
16 Ms. Hudson, indicating, "Shelley and I met with Luna Luna last week.
He was adamant about going to trial." He said he would not take a
17 deal for 10 or 20 years. He said, "I am already dead and it makes no
18 difference to me. No deal will I take." (FF 16; State's Ex. 1 at 28)
19 Ms. Hudson again met with Mr. Luna Luna on March 10, 2011, and
had further discussion with him about aggravating factors and how
they come into play. Ms. Hudson's handwritten notes from that
meeting reflect Mr. Luna Luna's statement to her that he did not want
20 to admit the killing was intentional. (FF 17, 18; State's Ex. 1 at 26)
On October 6, 2011, Ms. Hudson met with Mr. Luna Luna and noted
in her case file that he had many questions about the plea deal. He

1 maintained that the homicide was an accident. (FF 24; State's Ex. 1 at
2 4)

3 On December 12, 2011, Ms. Ajax emailed the Benton County
4 prosecutor requesting to set up a negotiations conference. (FF 25;
5 State's Ex. 6) The prosecutor, Andy Miller, stated:

6 I anticipate that you may be worried that I will not honor
7 Steve's original offer, given our different approaches to
8 murder cases. I will be honest. If I had charged the case,
9 I would have charged aggravated murder in the first
10 degree and not asked for the death penalty. And I likely
11 would have gone to trial instead of amending to murder
12 1, which, of course, is consistent with our office trying
13 almost all of our first degree murder cases. However, I
14 will assure you that I will listen with an open mind to a
15 pitch for us to keep Steve's original offer, though it is
16 certainly not anything I would do on one of our cases.

17 (FF 26; State's Ex. 6) On December 15, Ms. Hudson met with Mr.
18 Luna Luna in jail and documented the meeting in her case file. (FF
19 27)

20 On December 19, 2011, Ms. Hudson emailed the prosecutor
asking if he would consider dismissing the aggravating factors and
allow the defense to argue for a sentence within the standard range.
The prosecutor declined the request. (FF 28, 29; State's Ex. 7) In
response, Ms. Hudson indicated she would need more time to discuss
with Mr. Luna Luna before he officially declines the offer. She asked
whether he would be required to agree to the State's sentencing
recommendation, or if he could argue for a lower sentence. The
prosecutor responded that Mr. Luna Luna would be free to argue for
any sentence, as long as he understood the mandatory minimum was
20 years. (FF 30, 31; State's Ex. 7) Ms. Hudson met with Mr. Luna
Luna and informed him of this exchange in Spanish. He again told
her he would not plead guilty because he did not kill the victim
intentionally. (FF 34, 35, 36)

On January 9, 2012, Mr. Luna Luna filed a bar complaint
against both Ms. Ajax and Ms. Hudson. He wrote that his attorneys

1 were “pressuring him to sign a plea bargain because they said if we
2 take the case to trial they are assuring me we are going to lose.” He
3 concluded his bar complaint by asking for assistance as soon as
possible because “[a] life sentence is at stake.” (FF 37, 38; State’s Ex.
9)

4 On January 12, 2012, Ms. Ajax met with Mr. Luna Luna in the
5 presence of Spanish-speaking interpreter, Sharon Yedidia. Ms. Ajax
6 explained the prosecutor’s current offer recommending 420 months
7 and that he risked life by going to trial. She used documents to
8 explain the plea offer and sentence possibility. She advised him to
9 take the offer. She took notes of the meeting and wrote in her case
10 file that, “He wants to go to trial despite life sentence with no
11 possibility of parole.” (FF 39, 40, 42, 43; State’s Ex. 13) In open
12 court on January 13, 2012, the prosecutor filed the amended
information charging aggravated first degree murder. The prosecutor
stated that the effect of the amendment is if the defendant is convicted
of aggravated murder in the first degree, he will die in prison as
opposed to having the possibility of getting out of prison under the
original Information. Ms. Ajax stated: “My client was fully advised
prior to the filing of the Information. We knew this was going to
occur.” (FF 44, 45)

13 Ms. Hudson again met with Mr. Luna Luna on January 26,
14 2012, and made contemporary notes of the meeting. The notes
include: “Discussed consequences of not accepting plea. Period.
15 Life. Defendant clear. Will not plea. Would rather stay in prison all
of his life than admit he killed her.” (FF 46; State’s Ex. 1 at 45)

16 On February 12, 2012, Ms. Ajax emailed the prosecutor and
17 stated, “Mr. Luna Luna has asked us to convey to you that he would
18 plead to Murder in the First Degree with no aggravators. I am sure
you will not entertain this offer, but I have a duty to inform you of this
information.” (FF 47; State’s Ex. 12) Mr. Luna Luna did in fact ask
Ms. Ajax to send that email and offer, which was rejected by the
State. (FF 48)

19 The court found that both Ms. Hudson and Ms. Ajax
20 recommended to Mr. Luna Luna that he accept the plea offer and
plead guilty to first degree murder, based on the strength of the State’s

1 case and likelihood he would be found guilty at trial. Those
2 recommendations were conveyed in Spanish. (FF 49) Mr. Luna Luna
3 did tell his lawyers what happened was an accident and that is why he
4 did not want to plead guilty to first degree murder. (FF 50) The
testimony of Ms. Hudson and Ms. Ajax indicated that they advised
Mr. Luna Luna of the plea discussions in Spanish and that he
understood them. [Footnote] 4 (FF 51)

5 [Footnote] 4: At the reference hearing, Mr. Luna Luna testified that
6 his attorneys did communicate with him in Spanish and mentioned to
7 him that a conviction at trial would result in life without possibility of
8 parole. (March 30, 2017 RP 68) But he said he still did not
9 understand exactly what a “life sentence or no life out of prison
10 meant.” He said he thought it was a “joke” and decided to take the
11 case to trial because “they were only playing around with him.” (RP
69) The superior court did not adopt Mr. Luna Luna’s proposed
finding of fact 40 that he did not understand that rejecting the State’s
offer would translate to a life sentence without parole if the jury
returned a guilty verdict, or his proposed finding of fact 41 that he
would not have taken his case to trial had he known he would be
facing this outcome.

12 Addressing Mr. Luna Luna’s ineffective assistance claim in
13 view of the court’s reference hearing findings, he has not shown that
14 his attorneys performed deficiently as he alleges. The findings
15 establish that they communicated to him in Spanish the State’s plea
16 offer and the consequences of pleading guilty or going to trial.
17 Counsel advised him multiple times that he would face mandatory life
18 in prison if convicted at trial. He understood those consequences and
19 made an informed choice to reject the plea offer, as evidenced by his
20 repeatedly telling counsel he would not admit to intentionally killing
the victim and wanted to go to trial despite risking a life sentence with
no possibility of parole. And in his bar complaint, he asserted that his
attorneys were urging him to accept a plea bargain because if they
proceeded to trial he would likely lose. He asked for help because “a
life sentence is at stake.” (FF 38)

The unchallenged findings establish that counsel actually and
substantially assisted Mr. Luna Luna in making an informed decision
as to whether to plead guilty or to proceed to trial. He rejected their

1 advice despite knowing he would likely be convicted at trial based on
2 the strength of the State's evidence and that he faced mandatory life in
3 prison. He fails to meet the first prong of the Strickland test. Thus,
4 the court need not address the prejudice prong.

5 ECF No. 17-1 at 31-36, Exh. 3.

6 On July 17, 2018, the Washington Supreme Court denied discretionary
7 review of the Court of Appeals' decision. ECF No. 17-1 at 460-62, Exh. 23. In
8 denying review, the Deputy Commissioner of the Supreme Court observed:

9 In light of the factual findings from the reference hearing, Mr. Luna
10 Luna cannot demonstrate ineffective assistance of counsel based on
11 failure to communicate the plea offer. Defense counsel repeatedly
12 explained the plea offer to Mr. Luna Luna in Spanish, and he
13 repeatedly rejected the offer because he insisted he was innocent of
14 first degree murder. This claim does not merit review under RAP
15 13.4(b).

16 ECF No. 17-1 at 462.

17 On February 20, 2019, Petitioner filed a Petition for Writ of Habeas Corpus
18 in the United States District Court for the Western District of Washington. ECF
19 No. 1. Because the petition challenged the conviction from the Franklin County
20 Superior Court, the Western District transferred the case to this Court in the
Eastern District of Washington. ECF No. 7. Petitioner raises one ground for
relief:

Defendant was not given adequate representation because assigned
[counsel] did not speak fluent Spanish nor was the defendant provided
a court appointed, Spanish speaking interpreter, which hindered the

1 defendant's ability to comprehend the serious nature of the charged
2 crime for had he known, he would have pled guilty.

3 ECF Nos. 1 at 5; 11 at 5. That issue is now before this Court.

4 **EXHAUSTION OF STATE REMEDIES**

5 Respondent concedes that Mr. Luna Luna properly exhausted his available
6 state court remedies by fairly presenting this claim to the Washington Supreme
7 Court as a federal claim. ECF No. 16 at 8.

8 **TIMELINESS OF PETITION**

9 Respondent concedes that Mr. Luna Luna properly filed his federal habeas
10 petition within the statute of limitations. ECF No. 16 at 8.

11 **EVIDENTIARY HEARING**

12 "[A]n evidentiary hearing is not required on issues that can be resolved by
13 reference to the state court record." *Schriro v. Landrigan*, 550 U.S. 465, 474
14 (2007) (quoting *Totten v. Merkle*, 137 F.3d 1172, 1176 (9th Cir. 1998))
15 (evidentiary hearing is not required where the petition raises solely questions of
16 law or where the issues may be resolved on the basis of the state court record).
17 Indeed, review is limited to the record that was before the state court. *Cullen v.*
18 *Pinholster*, 563 U.S. 170, 181-82 (2011) ("[R]eview under [28 U.S.C.]
19 § 2254(d)(1) is limited to the record that was before the state court that adjudicated
20 the claim on the merits."). Because federal habeas is "a 'guard against extreme

malfunctions in the state criminal justice systems,’ not a substitute for ordinary error correction through appeal,” the types of errors redressable under § 2254(d) should be apparent from the record. *Ryan v. Gonzales*, 568 U.S. 57, 75 (2013) (quoting *Harrington v. Richter*, 562 U.S. 86, 102-03 (2011)). Here, Petitioner has not established the limited circumstances for entitlement to an evidentiary hearing pursuant to 28 U.S.C. § 2254(e)(2).

Accordingly, the Court rejects Petitioner’s request for an evidentiary hearing at ECF No. 11 at 1.

DISCUSSION

I. Standard of Review

A court will not grant a petition for a writ of habeas corpus with respect to any claim that was adjudicated on the merits in state court proceedings unless the petitioner can show that the adjudication of the claim “(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d); *Waddington v. Sarausad*, 555 U.S. 179, 190 (2009) (quoting § 2254(d)). Section 2254(d) sets forth a “highly deferential standard for evaluating state-court rulings which demands that state-court decisions be given the benefit of the doubt.”

1 *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (citation omitted).

2 Two separate statutory subsections govern a federal court’s review of state
3 court factual findings:

4 Factual determinations by state courts are presumed correct absent
5 clear and convincing evidence to the contrary, § 2254(e)(1), and a
6 decision adjudicated on the merits in a state court and based on a
7 factual determination will not be overturned on factual grounds unless
8 objectively unreasonable in light of the evidence presented in the
9 state-court proceeding, § 2254(d)(2).

8 *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003) (citation omitted); *see also*
9 *Landrigan*, 550 U.S. at 473-74. Importantly, a “state-court factual determination is
10 not unreasonable merely because the federal habeas court would have reached a
11 different conclusion in the first instance.” *Wood v. Allen*, 558 U.S. 290, 301
12 (2010). “The question under AEDPA is not whether a federal court believes the
13 state court’s determination was incorrect but whether that determination was
14 unreasonable—a substantially higher threshold.” *Landrigan*, 550 U.S. at 473.

15 “When a federal claim has been presented to a state court and the state court
16 has denied relief, it may be presumed that the state court adjudicated the claim on
17 the merits in the absence of any indication or state-law procedural principles to the
18 contrary.” *Harrington v. Richter*, 562 U.S. at 99. Section 2254(d) does not require
19 a state court to give reasons before its decision can be deemed to have been
20 “adjudicated on the merits.” *Id.* at 100. “Where a state court’s decision is

1 unaccompanied by an explanation, the habeas petitioner's burden still must be met
2 by showing there was no reasonable basis for the state court to deny relief." *Id.* at
3 98.

4 Under 28 U.S.C. § 2254(d), the Court owes a great level of deference to the
5 state court adjudication. *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003). Because
6 counsel has wide latitude in deciding how best to represent a client, the Court's
7 review of counsel's representation is also highly deferential. *Id.* Due to these two
8 layers of deference, the Court's review of the state court's adjudication of a claim
9 of ineffective assistance of counsel must be "doubly deferential." *Id.*

10 To show ineffective assistance of counsel, the petitioner must prove
11 counsel's performance was unreasonably deficient. *Strickland v. Washington*, 466
12 U.S. 668, 686 (1984). The petitioner must specifically show "counsel made errors
13 so serious that counsel was not functioning as the 'counsel' guaranteed the
14 defendant by the Sixth Amendment." *Id.* at 687. The Sixth Amendment right to
15 effective counsel extends to the plea bargaining process. *Lafler v. Cooper*, 566
16 U.S. 156, 162 (2012); *Missouri v. Frye*, 566 U.S. 134, 147-49 (2012). As with
17 claims of ineffective trial counsel, the Court applies the two-prong *Strickland*
18 standard to review claims that counsel provided ineffective assistance during the
19 plea bargaining process. *Lafler*, 566 U.S. at 162-63; *Hill v. Lockhart*, 474 U.S. 52,
20 58 (1985). To prevail under this standard, the petitioner must rebut the

1 presumption of competence and show that counsel's representation fell below that
2 of a reasonably competent attorney. *Strickland*, 466 U.S. at 689. The petitioner
3 must also establish prejudice by showing "that there is a reasonable probability
4 that, but for counsel's unprofessional errors, the result of the proceeding would
5 have been different." *Id.* at 694. Where the claim involves the rejection of a plea
6 offer, the petitioner must show that, but for the allegedly incompetent
7 representation by defense counsel, he would have accepted the plea offer. *Lafler*,
8 566 U.S. at 163-64.

9 **II. Analysis**

10 In this proceeding Mr. Luna Luna alleges that he was not given adequate
11 representation because assigned counsel did not speak fluent Spanish, nor was he
12 provided a Spanish speaking interpreter, which hindered his ability to comprehend
13 the serious nature of the charged crime for had he known, he would have pled
14 guilty. *See* ECF No. 11 at 5. In his reply, Mr. Luna Luna complains that his
15 counsel gave him "false hope, while relaying the state's plea offer", counsel kept
16 giving him "false hope at trial, and minimizing the state's case and the weight of
17 evidence in the case." ECF No. 20 at 2. Thus, Mr. Luna Luna contends that there
18 was no legitimate trial strategy by counsel failing to fully inform him on all the
19 facts and evidence and its consequences in his case. *Id.* at 4.

1 During the underlying State personal restraint petition proceeding, Mr. Luna
2 Luna contended that his attorneys failed to translate a plea offer written in English
3 and the consequence of not accepting the plea offer. ECF No. 17-1 at 207, Exh.
4 15. He contended that his attorneys failed to inform him that if he turned down the
5 state's offer and proceeded to trial and was convicted of aggravated murder, he
6 would be sentenced to life imprisonment without the possibility of release or
7 parole. *Id.*

8 Mr. Luna Luna does not show the state court adjudication of his claim was
9 an unreasonable application of clearly established federal law. The Washington
10 Court of Appeals applied the correct constitutional standard, citing, inter alia,
11 *Strickland v. Washington*, 466 U.S. 668 (1984); *Lafler v. Cooper*, 566 U.S. 156
12 (2012); and *Missouri v. Frye*, 566 U.S. 134 (2012). ECF No. 17-1 at 29, Exh. 3.

13 Further, in light of the factual findings from the reference hearing which
14 were adopted by the Washington Court of Appeals, Mr. Luna Luna has not
15 demonstrated ineffective assistance of counsel based on the failure to communicate
16 the plea offer. Mr. Luna Luna does not contest these factual findings. Mr. Luna
17 Luna has not shown that his attorneys performed deficiently. The state court
18 findings establish that his attorneys fully communicated to him in Spanish the
19 State's plea offer and the consequences of pleading guilty or going to trial.
20 Counsel advised him multiple times that he would face mandatory life in prison if

1 convicted at trial. He understood those consequences and made an informed
2 choice to reject the plea offer, as evidenced by his repeatedly telling counsel he
3 would not admit to intentionally killing the victim and wanted to go to trial despite
4 risking a life sentence with no possibility of parole. Tellingly, in his bar complaint,
5 he asserted that his attorneys were urging him to accept a plea bargain because if
6 they proceeded to trial he would likely lose. These unchallenged findings establish
7 that counsel fully assisted Mr. Luna Luna in making an informed decision as to
8 whether to plead guilty or to proceed to trial. He rejected their advice despite
9 knowing he would likely be convicted at trial based on the strength of the State's
10 evidence and that he faced mandatory life in prison. He rejected the plea offer not
11 because of a "false hope" that he would win at trial, but rather because he did not
12 want to admit the killing was intentional. He maintained that it was an accident,
13 and he said he was "already dead and it makes no difference to me. No deal will I
14 take."

15 Mr. Luna Luna has failed to show that these factual determinations should
16 be overturned because they are objectively unreasonable in light of the evidence
17 presented in the state court proceeding. *See Waddington v. Sarausad*, 555 U.S. at
18 190 (quoting § 2254(d)).

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1 **III. Certificate of Appealability**

2 A petitioner seeking post-conviction relief under § 2254 may appeal a
3 district court’s dismissal of his federal habeas petition only after obtaining a
4 certificate of appealability (COA) from a district or circuit judge. A COA may
5 issue only where a petitioner has made “a substantial showing of the denial of a
6 constitutional right.” *See* 28 U.S.C. § 2253(c)(2). A petitioner satisfies this
7 standard “by demonstrating that jurists of reason could disagree with the district
8 court’s resolution of his constitutional claims or that jurists could conclude the
9 issues presented are adequate to deserve encouragement to proceed further.”
10 *Miller-El v. Cockrell*, 537 U.S. at 327.

11 This Court concludes that Petitioner is not entitled to a COA because he has
12 not demonstrated that jurists of reason could disagree with this Court’s resolution
13 of his constitutional claims or could conclude that any issue presented deserves
14 encouragement to proceed further.

15 **ACCORDINGLY, IT IS HEREBY ORDERED:**

16 1. Petitioner’s Petition for Writ of Habeas Corpus (ECF Nos. 1, 11) is


17 **DENIED.**

18 2. Any appeal taken by Petitioner of this matter would not be taken in good
19 faith as he fails to make a substantial showing of the denial of a
20 constitutional right. Accordingly, a certificate of appealability is denied.

1 The District Court Executive is directed to enter this Order and Judgment
2 accordingly, furnish copies to the parties, and **CLOSE** the file.

3 **DATED February 21, 2020.**




THOMAS O. RICE
Chief United States District Judge